

Title 22, CALIFORNIA CODE OF REGULATIONS

Chapter 2.5. Third Party Liability

Article 2. Estate Recovery

§ 50961. Estate Claims.

(d) The Department shall provide an exemption of the claim in any of the following circumstances:

- (1) Where the decedent was under age 55 when the services were provided, unless the decedent was an inpatient in a nursing facility, intermediate care facility for the mentally retarded, or other medical institution;
- (2) During the lifetime of a surviving spouse;
- (3) When, as of the date of decedent's death, there is a surviving child of the decedent who is under age 21, and who can provide the Department with the documentary evidence specified in Section 50966(a)(2), to the address specified in Section 50966(a);
- (4) When, as of the date of the Department's notice of claim, there is a surviving child of the decedent who is blind, or disabled, within the meaning of Section 1614 of the Federal Social Security Act (42 USC Section 1382c), and who qualifies for a claim exemption under Section 50966.

§ 50966. Claim Exemption.

(a) The Department shall withdraw its claim against the estate of a deceased Medi-Cal beneficiary when the surviving child or his or her representative provides the following documentary evidence to the Department of Health Care Services, Estate Recovery Section, Mail Stop 4720, PO Box 997425, Sacramento, CA 95899-7425, which demonstrates the surviving child was blind or disabled as of the date of the Department's notice of claim:

(1) Documented proof of blindness or disability in the form of a copy of an award letter from the Federal Social Security Administration (SSA) or any correspondence from the SSA that provides verification of the surviving child's blindness or disability and that the blindness or disability existed on the date of the Department's notice of claim. This documentation is not required if the surviving child is enrolled in Medi-Cal with a blindness or disability aid code. If the surviving child is over age 65, is not in possession of the award letter, and his or her SSA/Supplemental Security Income disability benefits were converted to an aged category, the Department will accept a verification of benefits, awarded prior to age 65, from the SSA as proof that the benefits were based on blindness or disability criteria; and

(2) Documented proof that he or she is a surviving child of the decedent, such as a copy of a birth certificate or adoption papers.

(b) The Department will suspend collection activity on its claim for 60 days from notification, by telephone at the number on the Department's notice of claim or in writing to the Department, that the required documentary evidence as specified in subsection (a) will be provided. If, after 60 days, the Department does not receive the documentary evidence, collection activity will resume until such evidence is received.

(c) When documentary evidence of blindness or disability does not already exist, the surviving child or his or her representative may submit a request for a disability determination to the Department by telephone at the number on the notice of claim, or in writing at the address specified in subsection (a). Such a request must be submitted within 60 days from the date of the Department's notice of claim.

(d) Upon receipt of a disability determination request, the Department shall suspend collection activity on its claim. The Department shall mail a letter with the forms listed in subsection (d)(1) through (3) inclusive, to the surviving child or his or her representative, explaining that the forms, and the documented proof specified in subsection (a)(2), must be completed and mailed to the Department within 30 days from the date of the letter. For the purposes of the forms required under this subsection the term "applicant" means a surviving child seeking an exemption of the Department's claim.

(1) Applicant's Supplemental Statement of Facts for Medi-Cal, MC 223 (05/07); and

(2) Authorization for Release of Information, MC 220 14 pt (04/08); and

(3) Appointment of Representative -Estate Recovery, DHCS 6249 (3-08), (complete only if applicable).

(e) If within 30 days the Department does not receive the completed forms and documented proof, pursuant to subsection (d), a second letter shall be mailed to the surviving child or his or her representative granting an additional 30 days from the date of the second letter. Failure to submit the completed forms and documented proof within the additional timeframe will result in the resumption of collection activity.

(f) The California Department of Social Services (DSS) shall make the disability determinations on behalf of the Department when the surviving child's earned income does not exceed the federal Substantial Gainful Activity (SGA) limit. The Department shall forward the completed forms in subsection (d) to the DSS when earned income on the Applicant's Supplemental Statement of Facts for Medi-Cal, MC 223 (05/07) does not exceed the SGA limit. The DSS shall mail its decision to the Department. When earned income exceeds the SGA limit, the Department shall notify the surviving child or his or her representative that the disability determination cannot be made and collection activity shall resume.

(g) The Department shall notify the surviving child or his or her representative by mail of the disability determination made by the DSS. The disability determination is not subject to review through an administrative hearing.

(1) If the DSS determines that the surviving child qualifies as blind or disabled under the meaning of Section 1614 of the Federal Social Security Act (42 USC Section 1382c), the Department's claim shall be deemed withdrawn as of the determination date.

(2) If the DSS determines that the surviving child does not qualify as blind or disabled under the meaning of Section 1614 of the Federal Social Security Act (42 USC Section 1382c), collection activity shall resume.

Note: Authority cited: Section 20, Health and Safety Code; and Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 421, 1382c and 1396p(b), 42 USC; Section 14009.5, Welfare and Institutions Code; *Dalzin v. Belshe* (N.D. Cal. 1997) 993 F. Supp. 732; and *California Advocates for Nursing Home Reform v. Bonta* (2003) 106 Cal. App. 4th 498.